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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,759	07/28/2006	Jaap Bakker	P06937US0	1638
34082 7590 09/14/2007 ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			EXAMINER SINGH, KAVEL	
			ART UNIT 3651	PAPER NUMBER
			MAIL DATE 09/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/561,759

**Applicant(s)**

BAKKER ET AL.

**Examiner**

Kavel P. Singh

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/21/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

The 35 U.S.C. 112, second paragraph rejection to claim 17 has been withdrawn.

Applicant's arguments filed 7/10/07 have been fully considered but they are not persuasive. Applicant argues that Tarlton does not teach guides over which the products can slide directly or via a product carrier. Tarlton teaches guide (42) which extends about the spiral conveying path and guiding the conveyed products (C3 L38-45) on a continuous conveyor surface (26). The guide (42) provides the path for the conveying surface (26) to slide through. For the foregoing reasons, claims 1-21 stand rejected.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,9-13,15-17, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Tarlton U.S. Patent No. 4,627,529.

Claim 1, Tarlton teaches a plastic guide profile (42) having a guide surface (26) over which displaceable objects can slide directly or via a product carrier, and a support structure (32) supporting the guide profile (42), characterized in that the guide profile (42) is engaged at least at two spaced-apart positions by the support structure (32), at least one engaging position of which consists of a free support of the guide profile (42)

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on the support structure (32) such that the freely supporting side of the guide profile (42) is displaceable relative to the support structure (Fig. 1).

Claim 2, Tarlton teaches the guide profile (42) is coupled rigidly on one side to the support structure (Fig. 2).

Claims 3 and 4, Tarlton teaches the guide profile (42) is provided with a three-dimensional contact surface (34) at the position where it supports freely on the support structure (32) (Fig. 3).

Claim 5, Tarlton teaches the free support of the guide profile (42) on the support structure (32) is formed by a recess in the guide profile (42) in which an engaging part (34) of the support structure (32) engages close-fittingly and displaceably (Fig. 5).

Claim 6, Tarlton teaches a free space is enclosed between the engaging part of the support structure and a part of the recess on the side remote from the engaging part, in which recess the engaging part is axially displaceable (Fig. 3).

Claim 7, Tarlton teaches the guide profile (42) is provided with a guide surface and the recess with the engaging part displaceable therein is formed such that the direction of displacement of the engaging part relative to the recess is at least substantially parallel to the guide surface (Fig. 1).

Claim 9, Tarlton teaches the guide profile (42) is manufactured from a high-molecular polyethylene (C3 L51-52).

Claim 10, Tarlton teaches the support structure is manufactured from metal (C4 L42-43).

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Claim 11, Tarlton teaches the engaging part of the support structure and the recess co-acting therewith in the guide profile (42) are at least substantially cylindrical (Fig.5).

Claim 12, Tarlton teaches the guide profile (42) is provided on opposite sides with engaging positions (Fig.5).

Claim 13, Tarlton teaches a plurality of mutually connecting guides wherein a plurality of guide profiles are placed connecting with a gap to each other (Fig.5).

Claim 15, Tarlton teaches the plurality of profile parts are engaged by a single support structure (Fig.2).

Claim 16, Tarlton teaches the plurality of profile parts form a helical guide track (Fig.1).

Claim 17, Tarlton teaches displacing means for displacing the products for conditioning along the guide, a housing at least partially enclosing the assembled guide and the displacing means, and conditioning means for regulating the atmosphere in the housing (C2 L10-15).

Claim 19, Tarlton teaches a vertically oriented, helical conveyor track with a housing placed there around (Fig.1).

Claim 20, Tarlton teaches a rotatable core is placed in the helical conveyor track (Fig.1).

Claim 21, Tarlton teaches the displacing means comprise a driven endless conveyor track (C1 L53-55).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarlton U.S. Patent No. 4,627,529.

Claim 8, Tarlton teaches the tight fit of the engaging part of the support structure in the recess in the guide profile leaves free a slotted space between the engaging part and the inside of the recess of a maximum of 3 mm, preferably less than 1 mm (Fig. 1,3).

Claim 14, Tarlton teaches the gap between the profiles is between 5 and 35 mm at atmospheric temperature (Fig. 3).

The recitation of the dimension of engaging part into the recess or the gap between the profile part appear to be an obvious design choice and expedient in view of *Gardner v. TEC Systems Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984). The Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarlton U.S. Patent No. 4,627,529 in view of Thompson U.S. Patent No. 1,651,912.

Claim 18, Tarlton does not as Thompson teaches the conditioning means comprise temperature-regulating means (P1 L5-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate temperature controllable features as taught by Thompson into the invention of Tarlton in order to diversify the products the system can handle.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

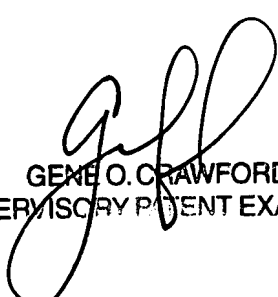
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Kavel P. Singh whose telephone number is (571) 272-2362. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KPS



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SUPERVISORY PATENT EXAMINER